

***United States Court of Appeals  
for the Second Circuit***



**PETITION FOR  
REHEARING  
EN BANC**



76-2013

B  
PLS

IN THE  
UNITED STATES COURT OF APPEALS

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DOCKET NOS. 76-2013, 76-2018, 76-2045

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MICHAEL HOLUP, CRAIG COPLEY,  
ARTHUR ANTHONY DeLORENZO,

Plaintiffs-Appellants,

vs.

J. BERNARD GATES, CHAIRMAN,  
CONNECTICUT BOARD OF PAROLE, ET AL,

Defendants-Appellees

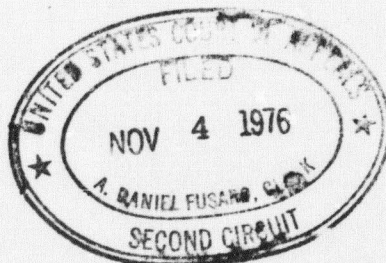
On Appeal from the United States District Court for the District  
of Connecticut

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PETITION FOR RE-HEARING PURSUANT TO RULE 40, FEDERAL  
RULES OF APPELLATE PROCEDURE, WITH SUGGESTION FOR HEARING IN BANC

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The Appellees respectfully represent that:

1. On October 20, 1976, a panel of this court rendered its decision in the instant appeal.

2. The decision of the court was not received by the Appellees until October 29, 1976.

3. In part, the decision of this court reversed the decision of the district court (See: Labonte v. Gates, 406 F.Supp. 1227 (D. Conn. 1976), on the issue of whether or not the Connecticut Board of Parole is required under due process principles to allow a prisoner to inspect his prison file prior to a parole release hearing.

4. The decision of this court remanded the case to the district court on this issue for an evidentiary hearing to determine whether or not:

a. Connecticut parole release hearings are based upon material mistakes;

b. what burden would be imposed upon the Parole Board if review of the prisoners files were allowed;

c. the history of mistakes actually called to the attention of the Parole Board in its parole release decisions;

d. the method that would be used in reviewing prisoners files for the exclusion of confidential materials and the burden involved therein; and

e. the burden involved in such review if access were limited



to those inmates who had been denied parole.

5. In refusing to affirm the decision of the district court that due process does not require that the Board of Parole give access to the prisoner to his file prior to his parole release hearing the court held, contrary to a previous decision of this court, in Billiteri v. United States Board of Parole, et al, Docket No. 75-6120, decided August 30, 1976.

6. In Billiteri at page 5296 of the slip opinion another panel of this court held, relying on Haymes v. Regan, 525 F.2d 540 (2nd Cir. 1975), that:

"The petitioner, therefore, has no such constitutional right to the information in the Parole Board's file, including but not limited to the pre-sentence report and the examiner panel's report.<sup>8</sup> Under the new act, see note 1 supra, however, a prisoner now has the statutory right under Section 4208(b) to this type of information, subject to the limitations stated therein."

7. Pursuant to the provisions of Rule 35(a), Federal Rules of Appellate Procedure, a hearing in banc is appropriate "(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions."

8. Pursuant to Rule 40(a), a petition for re-hearing is appropriate when the court "...has overlooked..." a point of law.

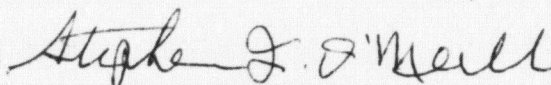
9. The Appellees respectfully claim that the conditions for both hearing in banc and re-hearing by this panel, as set forth above, have been satisfied.



WHEREFORE, the Appellees respectfully request that this decision be reheard in accordance with this petition.

Appellees

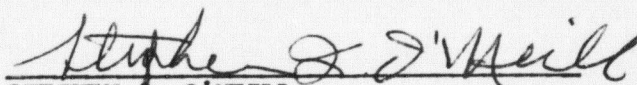
CARL R. AJELLO  
ATTORNEY GENERAL



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C E R T I F I C A T I O N

This is to certify that two copies of the petition for re-hearing were mailed, postage pre-paid to Stephen Wisner and Phil Kunsberg, Judith M. Mears, Dennis E. Curtis and Mary F. Keller, of counsel, Yale Legal Clinic, 127 Wall Street, New Haven, Connecticut, this 3rd day of November, 1976.



STEPHEN J. O'NEILL  
ASSISTANT ATTORNEY GENERAL

O R D E R

The foregoing petition having been considered by the court, it is herewith GRANTED.

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BY THE COURT